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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No. 2:19-cr-00176-RFB-VCF

Plaintiff,

VS.

JOSE DAVID GARCIA-GUTIERREZ,

Defendant.

**STIPULATION TO EXTEND
GOVERNMENT'S TIME TO RESPOND
TO DEFENDANT'S MOTIONS TO
DISMISS ECF 23 AND 24
(First Request)**

The government and Rene L. Valladares, Federal Public Defender, and Andrew Wong, Assistant Federal Public Defender, counsel for the defendant, Jose David Garcia-Gutierrez, (“Garcia”), do stipulate and agree that the government shall have an additional fourteen days, up to and including Friday, September 13, 2019, in which to respond to Garcia’s Motions to Dismiss (“Motions”), ECF 23 and 24. This case is presently set for trial on or about September 23, 2019, and the brief 14-day extension agreed to herein will not disturb the trial setting.

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1 This stipulation is entered into for the following reasons:

2 1. The Government's response is presently due on Friday, August 30, 2019.

3 Counsel for both parties agree to the above-requested 14-day extension of time for the
4 government to file its response to the pending Motions. Garcia is in custody pending trial
5 but the brief 14-day extension will not disturb the September 2019 trial setting. Counsel for
6 the defendant has represented that the defense does not oppose the proposed extension of
7 time for the Government to file its response to the Motions.

8 2. Government counsel will be out of the district from August 28, 2019 until
9 September 3, 2019.

10 3. The Court has scheduled a hearing on the defendant's request for release on
11 bond on September 3, 2019. The Court's ruling at that hearing may obviate the need for
12 pretrial motions practice to move forward.

13 4. The 14-day extension of time to file the government's response is not sought
14 merely for purposes of delay. The additional time requested herein is necessary to allow
15 the government sufficient time within which to be able to effectively and thoroughly
16 investigate, research, and respond appropriately to the Motions. Trial is set for September
17 23, 2019. The 14-day extension will not disturb the parties' ability to proceed to trial on
18 that date, and is not unduly prejudicial to the defense.

19 5. The parties agree that the government shall have an additional seven days,
20 up to and including Friday, September 13, 2019, in which to respond to the Motion.

21 6. Denial of this request for additional time would deny the parties the
22 opportunity of having continuity of counsel, taking into account the exercise of due
23 diligence. Further, denial of this request could result in a miscarriage of justice and the
24 ends of justice served by granting this request, outweigh the best interest of the public and

1 the defendant in a speedy trial.

2 7. The additional time requested by this stipulation is excludable in computing
3 the time within which the trial herein must commence pursuant to the Speedy Trial Act,
4 Title 18, United States Code, Sections 3161(h)(1)(D), and 3161(h)(7)(A), considering the
5 factors under Title 18, United States Code, Section 3161(h)(7)(B)(i) and (iv).

6 This is the first request to extent the government's time to respond to the Motions.

7 DATED this 23rd day of August, 2019.

8
9 /s/ Andrew Wong
10 ANDREW WONG
10 Assistant Federal Public Defender
10 Counsel for Defendant

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9 /s/ Kimberly M. Frayn
10 KIMBERLY M. FRAYN
10 Assistant U.S. Attorney

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2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**

4 UNITED STATES OF AMERICA,

5 Case No. 2:19-cr-00176-RFB-VCF

6 Plaintiff,

7 vs.

8 JOSE DAVID GARCIA-GUTIERREZ,

9 Defendant.

10 **ORDER**

11 Based on the pending Stipulation between the defense and the government, and
12 good cause appearing therefore, the Court hereby finds that:

13 1. The Government's response is presently due on Friday, August 30,
14 2019. Counsel for both parties agree to the above-requested 14-day extension of time for
15 the government to file its response to the pending Motions. Garcia is in custody pending
16 trial but the brief 14-day extension will not disturb the September 2019 trial setting.
17 Counsel for the defendant has represented that the defense does not oppose the proposed
18 extension of time for the Government to file its response to the Motions.

19 2. Government counsel will be out of the district from August 28, 2019
20 until September 3, 2019.

21 3. The Court has scheduled a hearing on the defendant's request for
22 release on bond on September 3, 2019. The Court's ruling at that hearing may obviate the
23 need for pretrial motions practice to move forward.

24 4. The 14-day extension of time to file the government's response is not sought
merely for purposes of delay. The additional time requested herein is necessary to allow
the government sufficient time within which to be able to effectively and thoroughly
investigate, research, and respond appropriately to the Motions. Trial is set for September

1 23, 2019. The 14-day extension will not disturb the parties' ability to proceed to trial on
2 that date, and is not unduly prejudicial to the defense.

3 5. The parties agree that the government shall have an additional seven days,
4 up to and including Friday, September 13, 2019, in which to respond to the Motion.

5 6. Denial of this request for additional time would deny the parties the
6 opportunity of having continuity of counsel, taking into account the exercise of due
7 diligence. Further, denial of this request could result in a miscarriage of justice and the
8 ends of justice served by granting this request, outweigh the best interest of the public and
9 the defendant in a speedy trial.

10 7. The additional time requested by this stipulation is excludable in computing
11 the time within which the trial herein must commence pursuant to the Speedy Trial Act,
12 Title 18, United States Code, Sections 3161(h)(1)(D), and 3161(h)(7)(A), considering the
13 factors under Title 18, United States Code, Section 3161(h)(7)(B)(i) and (iv).

14 THEREFORE, IT IS HEREBY ORDERED that the Government shall have an
15 additional fourteen days, up to and including Friday, September 13, 2019, in which to
16 respond to the defendant's motions.

17 DATED this 26th day of August, 2019.


